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AUG 17 2006

REMARKS

Entry of this amendment is requested.

The indication that claims 50-57 would be allowed upon filing a terminal disclaimer if revised in independent format is gratefully acknowledged.

Claims 42-49 were rejected under the judicially created doctrine of obviousness-type double patenting over U.S. Patent 6,251,923. Applicants respectfully traverse.

The Examiner is invited to review the structure claimed in claim 1 of the '923 patent and compare it to the structure in pending claim 42 and note the differences, e.g., compare the position of R² and R³ of the '923 patent as claimed in claim 1 of that patent with R⁴ and R⁵ of the presently pending application, and note that the ring positions are different. The Examiner provides no objective evidence that making the proposed changes would lead one of skill in the art to the claimed invention; this is an unsupported argument.

It is also respectfully submitted that the Examiner also improperly uses the entire '923 patent as a basis for the rejection, rather than only the claims. This is evidenced e.g., by the Examiner's statement "The subject matter claimed in the instant application is fully disclosed and covered..." in the '923 patent (underline added). The claims relied upon by the Examiner in making the rejection teach or suggest providing hydroxyl groups at the presently claimed R⁴ or R⁵ positions. Accordingly, the rejection is improper and should be withdrawn.

Furthermore, the claimed compounds having a nitro substituent have been found to provide a surprisingly high *in vivo* activity compared to compounds without a nitro substituent.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 42-49 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over Baker in view of Dillard. Applicants respectfully traverse.

Neither Baker nor Dillard disclose any nitro-substituted compounds as presently claimed. Dillard discloses a chlorinated phenyl attached via a methyl group to the ring nitrogen of the core ring structure, Dillard does not disclose a nitro group. Furthermore, there is an ethyl group on the core ring adjacent the nitrogen; note that Dillard teaches that his compounds are inhibitors of Human Nonpancreatic Secretory Phospholipase A2 and are "indole-3-acetamides with additional functionalities which provide increased interaction with important residues within the enzyme active site." The Examiner has not shown that his proposed changes to Dillard would not prevent the desired interaction with the target enzyme so as to lessen or eliminate the desired inhibition of the enzyme.

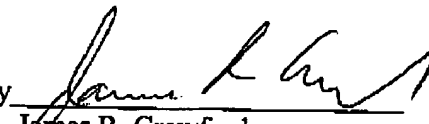
Baker does not specifically that R^2 must be in the R^4 or R^5 position as claimed, nor does Baker disclose a nitro group.

In view of the foregoing, allowance is respectfully requested.

The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-0624, under Order No. NY-HUBR 1253-US.

Respectfully submitted

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